IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1559 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BRIGBHUSHAN RAMKEVAL PANDE - Petitioner(s)

Versus

ORG SYSTEM LTD - Respondent(s)

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Appearance :

MR RJ SHARMA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
NANAVATI ASSOCIATES for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/10/2005

ORAL JUDGMENT

1. Though called out thrice no one was present for the respondent.

2. In the present petition, petitioner workman has challenged the legality of an award dated 29th March, 2000 passed by the Labour Court, Vadodara to the extent the same is against the petitioner.

3. The petitioner had complained about his illegal termination through a Reference (LCV) No. 319/99 filed before the Labour Court, Vadodara. This reference was allowed by setting aside termination and directing reinstatement of the petitioner with continuity and 75% back wages. Petitioner is aggrieved by the order of the Labour Court to the extent the same does not provide for full back wages. In the impugned award the Labour Court observed that though the termination is held to be illegal being opposed to the provisions of Industrial Disputes Act, and, therefore, the workman is entitled to be reinstated in service, the workman in his cross-examination had admitted that after his termination he had worked along with his brother and earned some income and he was not totally unemployed, and, therefore, direction for payment of 75% back wages would meet with end of justice.

4. Learned advocate Mr. Sharma appearing for the petitioner contended that the Labour Court erred in denying 100% back wages to the workman. He contended that when the termination is set aside as being illegal, as a natural corollary therefof the workman should be held entitled to 100% back wages. Reliance was placed on the following decisions of various High Courts.

1.1992 (64) FLR 995 (Bombay High Court Judgment)

2.2001 (1) LLJ 24 (High Court of Delhi

3.1996 (74) FLR 1871 (Punjab and Haryana High Court)

4.1991 (63) FLR 687 (Bombay High Court)

4.1 Reliance was also placed on Division Bench decision of this Court in the case of Y**amini J. Dave vs. The Director, I.U.C.A.A. & Anr reported in 2004 (2) GLH page 1.**

4.2. Learned advocate pointed out the observations of the Bench that once reinstatement is ordered as result of setting aside of illegal order of termination, full back wages should be granted.

5. In the present case as noted earlier Labour Court

found that during the period from date of termination till award petitioner was not totally unemployed. In his cross-examination he admitted that he had worked along with his brother and earned some income. Considering this aspect of the matter and considering the position of the employer the Labour Court was of the opinion that to pay 75% back wages would be proper.

6. It is by now well settled that the question of back wages is discretionary with the powers of Labour Court/Industrial Tribunal. In the decision of Hon'ble Supreme Court in the case of **P.G.I. Of M.E. And Research vs. Raj Kumar etc. reported in AIR 2001 SC 479**, it was observed in para 12 that payment of back wages having a discretionary element involved in it has to be dealt with, in the fact and circumstances of each case and no straight jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.

6.1 In the decision of **Hindustan Motors Ltd. vs. Tapan Kumar Bhattacharya and Anr. Reported in AIR 2002 SC 2676** in the context of provisions of Section 11 of the Industrial Disputes Act, it was observed that it vests a

wide discretion in the Tribunal in the matter of awarding proper punishment and also in the matter of the terms and conditions on which reinstatement of the workman should be ordered. It necessarily follows that the Tribunal is duty bound to consider whether in the circumstances of the case, back wages have to be awarded and if so, to what extent.

6.2 This decision was also reiterated by the Hon'ble High Court once again in the case of I**ndian Railway Construction Co. Ltd. vs. Ajay Kumar reported in AIR 2003 SC 1843.**

6.3 In the decision of **M.P.State Electricity Board vs. Smt. Jarina Bee reported in AIR 2002 Sc 2657,** it was observed that the High Court committed an error in holding that the award of back wages was the natural consequence in all cases where the order of removal was set aside.

7. Reverting back to the facts of the present case, it can be seen that the workman was engaged even according to him for period from 1988 to 1991. That he admitted to have earned some income during the period when he was

under termination. Labour Court, therefore committed no jurisdictional error in not awarding full back wages in the present case. No further enhancement of back wages can be insisted upon. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

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